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DEPARTMENT OF ENERGY  
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: January 31, 2006

Case Number: TSO-0352

This Decision concerns the eligibility of xxxxxxxxxxxxxxxx (hereinafter "the individual") for continued access authorization. The regulations governing the individual's eligibility are set forth at 10 C.F.R. Part 710, "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." This Decision will consider whether, based on the testimony and other evidence presented in this proceeding, the individual's access authorization should be restored. For the reasons detailed below, it is my decision that the individual's access authorization should not be restored.

I. BACKGROUND

On December 9, 2005, the DOE issued a notification letter to the individual. Attached to the notification letter was a statement entitled "Information creating a substantial doubt regarding eligibility for an Access Authorization." (hereinafter referred to as the "information statement"). The information statement indicates three security concerns.

The first security concern arises from the individual's failure to accurately answer three questions on his November 24, 2000 Questionnaire for National Security Position (QNSP). Information statement at 1. The first question that the individual answered incorrectly requested information about whether the individual had ever been charged with any alcohol related offense. The individual answered that question in the negative, although the information statement shows that the individual was arrested for alcohol related offenses five times between 1968 and 1992. The second failure to provide accurate information related to the individual's QNSP response to the effect that he did not have any financial delinquencies. The information statement indicates that the individual's automobile was repossessed, three accounts were charged off and he has one past due account. The third failure to provide accurate information was the individual's response that he was never been convicted of any offense with a fine in excess of \$150. The information statement indicates that in 1999 the individual paid a fine of \$500 for operating a fireworks stand without proper business licenses. The information statement indicates that these failures to accurately complete his QNSP raise a security concern under Criterion F. 10 C.F.R. § 710.8 (f).

The second security concern indicated in the information statement relates to the individual's use of alcohol. Information statement at 2. The information statement indicates that the individual was arrested and charged with Driving Under the Influence of Alcohol (DUI) on four occasions (April 2002, March

1992, December 1978, January 1969). Further, in 1968 he was charged with drinking in public and on another occasion in 1968 he was charged with possession of beer. [Hereinafter referred to as the individual's six alcohol-related arrests.<sup>1</sup>] Finally, in the early 1960s, the individual was disciplined by a military tribunal for an alcohol related incident. Information statement at 3. The information statement indicates that in a September 19, 2005 evaluation report, a DOE consulting psychologist diagnosed the individual with an alcohol-related disorder not otherwise specified. DOE Exhibit #8. The consulting psychologist's report also indicates that the alcohol-related disorder may cause significant defect in the individual's judgment. The information statement finds that the alcohol-related disorder raises Criteria J and H security concerns.

The third security concern indicated in the information statement relates to unreliability and financial irresponsibility under Criterion L. The first basis for this concern is the individual's failure to notify the DOE of his April 2002 DUI in a timely manner. The second basis is the individual's pattern of not meeting his financial obligations. Information statement at 4.

The notification letter informed the individual that he was entitled to a hearing before a hearing officer in order to respond to the information contained in the notification letter. The individual requested a hearing. I was appointed to serve as the hearing officer. In accordance with 10 C.F.R. § 710.25(e) and (g), I convened a hearing in this matter (the hearing).

At the hearing the individual testified and he provided the testimony of his wife, his mother, his son, his daughter, his supervisor, and a coworker. The DOE called the DOE consulting psychologist.

## II. HEARING

### A. The DOE Consulting Psychologist

The DOE consulting psychologist was the first witness to testify. She testified that during her interview with the individual he openly described his history of alcohol related problems. Transcript of Hearing (Tr.) at 11. She indicated that "The fact that he had so many DUIs over such a span of years, and so many alcohol-related incidents did concern me." Tr. at 13.

During her interview the individual initially minimized his current alcohol consumption.

Initially he said he had stopped drinking, wasn't drinking anything. It also concerned me because there have been other times reflected in his personnel security file and in the PSIs where he had not been entirely forthcoming about things that had happened regarding his DUIs. And so that tendency again to either minimize or to say, well, I didn't think it mattered, because it wasn't a full-blown conviction, or it wasn't as bad a problem as he thought it was in order for me to be reported. That was of concern to me.

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<sup>1</sup> The six alcohol-related arrests include the five arrests that the individual failed to report on his QNSP, plus his April 2002 DUI arrest that occurred after he completed the QNSP.

Tr. at 19. She testified that the individual later in the interview he told her that he has consumed less than 12 beers during the last year. Tr. at 19.

She diagnosed the individual with an alcohol-related disorder, not otherwise specified. Tr. at 15. She testified that in order for the individual to demonstrate rehabilitation or reformation he should abstain from alcohol for one year and should receive treatment from a specialist and should attend weekly AA meetings. Tr. at 17.

The DOE consulting psychologist also testified about the financial information the individual provided during her interview. The individual told her that he filed for bankruptcy in 1993, that in 1998 an insurance company delayed paying a claim, causing him significant financial difficulties and that in 2002 he became over extended when he helped one of his children pay surgery-related bills. Tr. at 14. The individual told her “that his current financial situation is fair; most of his bills are paid, but that he had gotten behind on paying some of them.” Tr. at 14.

The DOE consulting psychologist testified for a second time at the end of the Hearing. She indicated that the testimony at the hearing has convinced her that the individual has recently consumed alcohol to excess. She indicated

My concern is the unpredictability of the times when [the individual] may drink too much, they seem to be very sporadic and very spread out. And going to AA can serve as a reminder to keep oneself better under control. Maybe going once a week would be too intense for that purpose. And possibly if he was to see a mental health professional who was an expert in dealing with these sorts of binge episodes . . . that counselor might decide that going every week would simply be a waste of time. I think probably going maybe twice a month would be helpful in this case, if only to . . . [remind himself of ] things that have happened as a result of alcohol abuse.

Tr. at 57. She also indicated that she believes the individual has a pattern of failing to exercise good judgment after he consumes excessive amounts of alcohol

I continue to believe that there are some times when the individual drinks too much, and although they may be few and far between at some times, it’s caused him significant legal problems. And he has not . . . demonstrated good judgment during those times [when the individual drinks too much]

Tr. at 73.

## B. The Individual

The individual testified that he does not believe he has a drinking problem. Tr. at 54. He provided a letter from his neighbor indicating she had been at the individual’s home on many occasions and she has never seen any alcohol consumed in the home. Individual’s exhibit #1.

The individual testified that he last consumed alcohol in April 2002. Tr. at 55. However, after several questions he indicated that he has occasionally had a single beer and the last time he can recall consuming a beer was December 2005. Tr. at 56. He testified that he will consume a beer or two in the future but he will not drink to excess. Tr. at 61.

The individual testified that he believes that he has only consumed alcohol to excess on a few occasions. He believes his arrests have occurred on each occasion that he has consumed alcohol to excess. He indicated he would expect to get arrested periodically if he was drinking to excess. "But it just seems like it's unnatural in my case, that the only times I went out and [consumed] too many, I've got picked up every time I've done it." Tr. at 62.

The individual was asked why he failed to report the April 2002 DUI to the DOE. He testified that "he thought you were supposed to report it when you paid the fine or were convicted of it." Tr. at 58. When he was reminded that during a PSI in 2001 he was told by the security specialist that he needed to report all arrests within two days, he testified that it must have slipped his mind. Tr. at 59.

The individual testified that in July 1999 he paid a \$500 fine for 21 tickets he received for violations related to a fireworks stand that he was operating. Tr. at 62. He was asked why he answered no the question on the QNSP that asked about fines in excess of \$150. He testified that "I just overlooked it, and I shouldn't have."

#### C. The Individual's co-workers

A co-worker of the individual testified that he has known the individual for one year. Tr. at 35. He testified that the individual is a reliable employee. Tr. at 39.

The individual's supervisor testified that he has known the individual for four years. Tr. at 35. He testified that

I'm his supervisor, and [his work has] been excellent. [The individual] is a dependable employee. We give him a job, you can count on him. He's a foreman. He leads his crew out there. He does his work. He's always met the time limit and the budget restraints on getting the work done.

Tr. at 36. He further testified that he does a fitness for duty review each morning that consists of talking to each of his employees. There never has been any indication that the individual had consumed alcohol prior to work. Tr. at 38. He also testified that the site has a drug and alcohol test program that randomly selects employees for testing. Employees are tested approximately twice a year. Tr. at 36. He testified that the individual has passed each of those random drug and alcohol tests. Tr. at 36.

He testified that he has occasionally seen the individual during non work hours but has never seen the individual consume alcohol. Tr. at 37. He has never heard anyone indicate that the individual consumes alcohol nor has he ever heard any suggestion that the individual has ever become intoxicated. Tr. at 38.

#### D. The Individual's Wife

The individual's wife testified that she and the individual have been married for thirty-six years. Tr. at 21. She testified that the individual is not an alcoholic. Once in a while he consumes one or two beers. Tr. at 22.

She testified that she is aware that the individual has received DUIs. However, between the DUIs he rarely drinks and when he does he consumes only one beer or at most two beers. Tr. at 22. She testified that the last time the individual consumed alcohol at home was December 29, 2005. Tr. 26.

The individual's wife also testified about the family's financial problems. She indicated the family has had financial problems. Tr. at 22. The 1993 bankruptcy was caused by a severe job injury she sustained. Tr. at 22. The financial problems in 2000 were caused by their helping one of their sons pay surgery expenses. Tr. at 23. She testified that "We're dealing with a lot of these things on our credit report. Some of them I've never heard of." Tr. at 23.

She summarized her testimony by indicating the individual is safety oriented and takes pride in his job and his family. She testified that "Yes, he's my husband, but I wouldn't be here 36 years if he wasn't a good man." Tr. at 23.

#### E. The Individual's Other Family Members

The individual's 35 year old son testified that he has only seen his father under the influence of alcohol one or two times and both occasions were more than 15 years ago. Tr. at 29. He testified that in the last six months he has been in his parents' home 5 times and his parents have been in his home 4 times. There has been no alcohol served during any of those visits and he has not seen his father consume alcohol during that period. Tr. at 32. He testified that the individual is an honest and reliable person. Tr. at 31.

The individual's 21 year old daughter testified that she has lived in the individual's home her entire life. Tr. at 41. She has seen her father consume a beer but has never seen him under the influence of alcohol. Tr. at 42. She has not seen her father consume alcohol in the last several years and she does not believe there is any alcohol in their home. Tr. at 43. She testified that there has never been any problem with alcohol use in their home. Tr. at 42.

The individual's daughter also testified that she does not believe that the family has ever had financial problems. Tr. at 42. She testified that she is currently on medical leave because of her pregnancy. Tr. at 44. Since she is no longer working, she currently relies on the individual for financial support. Tr. at 44.

The individual's mother-in-law testified that she has lived in the individual's home for six years. Tr. at 46. She testified that she has seen the individual drink a single beer on a few occasions. Tr. at 47. However, she has not seen the individual drink alcohol in "quite a while." Tr. at 47. She indicated that she was not aware that the individual has received four DUIs. Tr. at 48.

### III. REGULATORY STANDARD

In order to frame my analysis, I believe that it will be useful to discuss briefly the respective requirements imposed by 10 C.F.R. Part 710 upon the individual and the hearing officer.

#### A. The Individual's Burden of Proof

It is important to bear in mind that a DOE administrative review proceeding under this Part is not a criminal matter, where the government would have the burden of proving the defendant guilty beyond a reasonable doubt. Once a security concern has been raised, the standard in this proceeding places the burden of proof on the individual to bring forth persuasive evidence concerning his eligibility for access authorization. 10 C.F.R. §§ 710.21(b)(6), 710.27(b), (c), (d).

This burden is designed to protect national security interests. The hearing is "for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization." 10 C.F.R. § 710.21(b)(6). The individual must come forward at the hearing with evidence to convince the DOE that restoring his access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.7(a).

This is not an easy evidentiary burden for the individual to sustain. The regulatory standard implies that there is a presumption against granting or restoring an access authorization. See *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) ("clearly consistent with the national interest" standard for the granting of access authorizations indicates "that security determinations should err, if they must, on the side of denials"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), cert. denied, 499 U.S. 905 (1991) (strong presumption against the issuance of an access authorization). Consequently, it is necessary and appropriate to place the burden of persuasion on the individual in cases involving national security issues. In addition to her own testimony, the individual in these cases is generally expected to bring forward witness testimony and/or other evidence which, taken together, is sufficient to persuade the hearing officer that restoring access authorization is clearly consistent with the national interest. Personnel Security Hearing (Case No. VSO-0002), 24 DOE ¶ 82,752 (1995).

#### B. Basis for the Hearing Officer's Decision

In a personnel security case under Part 710, it is my role as the hearing officer to issue a decision as to whether granting an access authorization would not endanger the common defense and security and would be clearly consistent with the national interest. 10 C.F.R. § 710.27(a). Part 710 generally provides that "[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all relevant information, favorable and unfavorable, as to whether the granting of access authorization would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.7(a). I must examine the evidence in light of these requirements, and assess the credibility and demeanor of the witnesses who gave testimony at the hearing.

#### IV. ANALYSIS

##### A. Alcohol Consumption

The individual realizes that six alcohol-related arrests suggest that he has consumed alcohol to excess on many occasions. His testimony to the effect that every time he has consumed alcohol to excess he was arrested was an attempt to convince me that six arrests do not indicate a pattern of excessive consumption of alcohol. I find that his assertion that he only consumed alcohol to excess on those 6 occasions when he was arrested is simply not credible. I believe he has consumed alcohol to excess on many more occasions than he is willing to admit.

I have been convinced by the testimony of the individual, his wife, other family members and the letter from the individual's neighbor that the individual's family does not consume alcohol and that the individual has not consumed any alcohol in his home since December 2005. I have also been convinced that in the last three years the individual has consumed, in his home, at most one or two beers on less than 10 occasions. The DOE consulting psychologist's testimony indicates that she also believes that the individual consumes limited amount of alcohol in his home.

The individual believes he has mitigated the security concern relating to the alcohol-related disorder by the testimony that, at home, he has consumed only limited amounts of alcohol in the last three years and his stated commitment that he will not consume alcohol to excess in the future. However, testimony that the individual does not consume alcohol excessively at home does not resolve the security concern. The record indicates that each of the individual's six alcohol-related arrests occurred when the individual consumed alcohol to excess while socializing with his friends at public places. There was no testimony from his friends that indicates that he has not recently consumed alcohol on social occasions. Therefore, the individual has not convinced me that he has not consumed alcohol to excess when socializing with his friends in the last three years. In fact he has presented no evidence about his recent alcohol consumption outside of the home.

Furthermore, the individual has not convinced me that, in the future, he will fulfill his commitment not to consume alcohol to excess. The individual has indicated that he plans to continue limited consumption of alcohol. His historic pattern of alcohol consumption indicates that limited consumption of alcohol leads to social situations in which he consumes alcohol to excess. There has been no testimony that would suggest his historic pattern of alcohol consumption will not be repeated. Therefore the Criteria J and H security concern have not been mitigated.

##### B. Financial Problems

The individual has a long pattern of difficulties in paying his financial obligations. During the hearing, he was unfamiliar with several of the debts on his current credit report. Furthermore, he has no inclination to adopt a plan to assure the DOE that he will be able to meet his financial obligations in the future. Therefore, he has failed to mitigate the Criterion L security concern.

##### C. Falsification

Finally the individual has not mitigated the falsification security concern. He stated that his failure to accurately report information concerning his alcohol arrests, financial delinquencies and his \$500 fine were

oversights and do not form a pattern of falsification. He has also indicated that he failed to report his DUI because he forgot that he had a reporting requirement. These assertions are not credible. I believe the individual has demonstrated a pattern of failure to provide accurate information to the DOE on his QNSP. The individual's testimony at the hearing indicates he is still unwilling to provide accurate information to the DOE. For example, initially the individual testified that he has not consumed alcohol since 2002. It was only after several questions that he indicated he continued to consume alcohol until December 2005. The individual has provided no reason for me to believe that he will scrupulously provide accurate information to the DOE in the future. Therefore, he has failed to mitigate the Criterion F security concern.

## V. CONCLUSION

I have concluded that the individual has not mitigated the DOE security concerns under Criteria F, L, J and H of 10 C.F.R. § 710.8. In view of the record before me, I am not persuaded that restoring the individual's access authorization would not endanger the common defense and security and would be clearly consistent with the national interest. Accordingly, I find that the individual's access authorization should not be restored.

The review procedures applicable to proceedings under Part 710 were revised effective September 11, 2001. 66 Fed. Reg. 47061 (September 11, 2001). Under the revised procedures, the review is performed by an Appeal Panel. 10 C.F.R. § 710.28(b)-(e).

Thomas L. Wiekert  
Hearing Officer  
Office of Hearings and Appeals

Date: May 25, 2006